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Supreme Court, U.S.
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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

Ming Yen Hou,

Petitioner,

V.

New York City Department Of Environmental Protection,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT (USCA2 NO. 07-3155-CV)

PETITION FOR A WRIT OF CERTIORARI

Ms Ming Yen Hou
Petitioner Pro Se

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QUESTIONS PRESENTED

1. Is it wrong that my injury by assigned chemical exposure after my lawsuit complaint was filed been declared by US Court of Appeals for the Second Circuit as "Out of date"; (see the first paragraph of p. 4 of the "Summary Order".0 after my medical doctor Russell Laudon came to court to testify; even when I was gravely injured by the retaliating act of assigning me to dispose huge amount of volatile chemicals by laboratory hood in violation of Osha rules? (Even after US Supreme Court expanded the scope of anti-rataliation law on June 22, 2006 by ruling on Burlinton Northern and Santa Fe Railway Co. V. White, certiorari to the US Court of Appeals for the Sixth Circuit, no. 05-259.)

2. Is it wrong that Dr. Jian Qi's deposition transcript was forbidden to be read at trial while trial judge at pretrial conference repeatedly permitted me to read it at trial? Especially when during the trial my former attorney Saurborn on March 27, 2007 presented "Notice of Subpoena " (from his computer), The defendant's attorney Madden claimed that it was "Notice of Subpoena, no affidavit of service," since we had substitute of attorney, so Mr. Saurborn returned to me the most of the file. Then at night of March 28, 2007, I looked at the return file again, I found the "Affidavit of Service " on Jian Qi, so I presented to court and the defendant' attorney,. The defendant's attorney claimed that it was "affidavit of service, no Notice of Subpona, but he was shown both documents in two separate days, Judge Sand would not allow me to say anything about it any more. (See excerpts of trial transcript, appendix p. A44-A46. And see p. 10-11; p. 19- 20 of the petition.) (Both (Notice of Subpoena" and "Affidavit of Service" were presented to court and defendant's attorney at trial, and I wrote all those

things in my "Post trial Brief" and my appeal brief to the Second Circuit.) See excerpts of trial transcript, appendix p. A44-A46 , and see p. 10-11; p. 19-20 of the petition.)

3. Is it obvious that the Special Projects Lab of Bureau of Wastewater Treatment of NYC DEP discriminated against chinese chemists when it was proven by trial transcript and by deposition transcript there were only two chinese chemists from 1987-December , 2002 (the deposition time of the lab chief Patel) among the about 25 lab personnel there; and in 1992 after Jian Qi was fired, I became the only chinese chemist there, and I presented the terrible evaluations of Jian Qi, (1992), and mine of 1994 in comparison. And there were many chinese chemists and scientists in the labs of Bureau of Water Supply, so there were plenty of chinese chemists and scientists on market? (See appendix p. A38-A43, and the telephone list of lab personnel of Water Supply. And see p. 10-11; p. 19-20of this Petition.)

4. Is it obvious that the lab chief of Process Control Labs of the Bureau, Purnima Dixit, under whom I worked until Dr. Jian Qi was fired by the Special Projects Lab Chief Patel, discriminated against chinese chemists when she openly made the statemen tin Jamaica Process Control Lab :" We Indians are Aryan, Hitler said we are the best " in presence of a chinese chemist Yvonne Huang. Such statement was confirmed by deposition transcript of December , 2002, and I questioned her (Dixit) and read her deposition transcript at trial.? (See the excerpts of trial transcript and deposition transcript, appendix p. A45-A49. And see p. 10- 11 and p. 19-21 of this petition.)

5. Is it obvious that the Asian Indian Lab Chiefs discriminated v. non Asian Indian lab personnel in general,

when former colleague Michael Golden testified so at my trial, and when several chemists of the Bureau filed complaints of discrimination with NYS Human Rights ? (I put those claims in my proposed pretrial Order, and I tried to read about one claim at trial, but trial judge forbade me to. See excerpts of trial transcript, appendix p. A95-A103).

6. Is it wrong that I was forbidden to read deposition transcript of 2002 of former colleague Richard Odorfer for impeach purpose, the trial judge ordered him to testify a new, even when Ordorfer desperately appealed to him that he only could say by his memory (in 2007)? (See excerpts of trial transcript, appendix p A32-A37; A50-53.)

7. Is it wrong that defendant's then attorney raised **new and false claims** in defendant's "Reply" brief of their motion for summary judgment? In the "Reply" , defendant's attorney claimed that I did not protest against the denials of promotion of 2000 and 2001; and defendant's attorney claimed that I complained about physical laborious work assignment of "Inventory", that I expected special treatment, so my age discrimination claim should be dismissed ? Appendix p. A54-A60; A11; and p. 4-5 and p. 6-7 of the Petition.

8. Is it wrong in the Report and Recommendation of Feb. 2004 that the Magistrate judge dismissed my claims of denials of promotion of 2000 and 2001 by misleading and false claims in Defendant attorney 's "Reply" that I never protested against those two denials of promotions, when in fact I filed Motion paper on 1/29/02 and protested against the denial of promotion of 2001 vehemently, and I protested the denial of promotion 0f 2001 in letters to Judge Sand and to then defendant's attorney in 2001. And in forensic

accountant's 'Plaintiff's Economic Damage served on defendant's attorney on December 31, 2002, the dead line of Discovery, I protested against the denial of promotion of 2000, and even earlier than that, I protested about the rather secret promotion to then defendant's attorney, andndefendant's then attorney wrote about the promotion of 2000 ?.(See appendix p.A56-A60 .)

9. Is it wrong that Report and Recommendation of Feb. , 2004, magistrate judge dismissed my "Age Discrimination" just by the twisted false statement of defendant's attorney, that magistrate judge even forgot his own court Order of June 24, 1999, in such Order , the judge specifically ordered defendant to produce portions of the personnel files of the individuals that provide age, education and employment history. Which was due to my Motion of May 4, 1999, in which document I specifically requested the documents of chronic listing of the ages of the chemists who were chosen for promotion within the Bureau of Wastewater Pollution Control. My ADEA claim was about denials of promotion to me due to my age, I was the oldest of all?

In spite of the fact after the dismissal of the claims of denials of promotion of 2000 and 2001 and ADEA, my then attorney Saurborn and I wrote to Judge Sand to protest those obviously wrong dismissals, but we were all denied of.

10. Is it wrong that Judges and defendant's attorney made two parties stipulation on me that I was not allowed to talk about technical things, since I have proven my superior performance in chemical work by deposition done in 2002 on my former colleague Odorfer and Lab chief Patel, (and I got outside expert witness' evaluations to support those testimonies. Especially by court order earlier, on Feb. 20,

2001, defendant's attorney answered my Interrogatories that I was not promoted because of my technical deficiency. Appendix p. A60-A63. But then before the trial, the judges eliminated my rights to present any merits of my technical contributions, just allow defendant to attack at my "personality",. Those answers to my "Interrogatories" were not change able .Appendix p. A52-53;A69-A72.

11. Is it wrong for defendant (DEP) to disregard and sent back the NYC Personnel's "Certification" on the Promotion list to comply with NYS Law to replace provisionals within four months after the eligibility list was established?(The list of Promotion to Associate chemist was established on 5/7/97). The list was first certified to DEP on May 30, 1997, then the re-certification was on Nov. 6, 1997, by then DEP already got additional positions of Associate chemists approved, then they were able to keep the provisional associate chemists. I was list no. 1, the provisional lab supervisor Sarikhani did not make the list. They only appointed me on November 24, 1997, From May 7, 1997 to September 7, 1997 was four months, thus delayed my promotion almost three months. Thus I could not replace the provisional associate chemist Sarikhani as lab supervisor, then I could not be justified to become Associate chemist , level II, (the standard level for supervisor of chemical labs of the Bureau), **and later after I was pushed to retire**, DEP made the standard level for chemical lab supervisors as level III, I could not get any of those opportunities, was that wrongfully depriving my rights? Especially by NYS Civil Service Law, section 65, provisional appointment must not exceed 9 months, Sarikhani's provisional appointment as Associate chemist already had been for years. And by the section 65, the provisionals must be replaced by the eligibles no later than four months after the establishment of the civil

service list ? P. 2-3 of the Petition., And appendix p. A66-A68 ?

12. Is "Counter Attack matter of defense"? Is it wrong that I was not allowed to use my proven superior technical contributions to attack defendant's discrimination in not promoting me ? DEP even not recognizing my contributions but giving me terrible rating in the year of contributing (1998), that was after my filing the law suit complaint, surely "Retaliation!"

13. Does the injustice on me permit even encourage continuous discrimination of the Asian Indian Lab Chiefs toward non Asian Indians lab personnel, especially professional chemists ? (The fact is that Dixit was promoted to the Chief of all the laboratories of the Bureau last year, i. E., The Process control Laboratories; The Special projects Laboratories and the Biological laboratories of the Bureau of Wastewater Treatment , NYC DEP ?

14. Is it wrong that the US District Court used a letter of 1975 of a supervisor (Kirschner) to decide that I was difficult to work with and had communication problems to rule out my discrimination claims, when the charges were never proven, but forbade me to read Dr. Jian Qi's deposition transcript at trial? Please see the "Opinion " of the District Court.?

15. With all the documental evidence presented, and with all the trial transcript and the appropriate portions of deposition transcripts in the appendix to the Second Circuit, should the Second Circuit Court have reversed the decision of the US District Court, Southern District of New York ?

16. In case if I am allowed to write Brief On the Merits, then is it evident that I should write about my repeatedly presented in my Post Trial Brief; my Appeal Brief and my trial testimonies what I seek: Economic damage; Compensation due to Pain and Suffering and Reimbursement of my legal Expenses ? (See p. 4 of this Petition.)

PARTIES TO THE PROCEEDING

The parties to this proceeding are:

1. Petitioner Ming Yen Hou.

2. Department Of Environmental Protection, City Of New York.

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C. On p. 4 of the Summary Order, it claimed that the evidence showed I was considered difficult to work with, and had communication problem. Those were not proven at trial. It was entirely by a letter of Kirschner of 1975 (more than 30 years ago). And I quit the job with NYC DEP for the wrongful treatment of 1975-76, then I applied for unemployment insurance with NYS Department of Labor. After investigation, I was vindicated of any fault, and there was a letter from NYS to NYC DEP , see p. 5-6 of this document, and Appendix P. A71-A72 . 27

D. On p. 4 of Summary Order, it claimed that my former counsel was **unable** to produce an affidavit of service. That was entirely untrue and twisting. When we had transfer of attorney , my former attorney Saurborn returned most of the file to me. He came to court on March 27, 2007 to present a copy of "Notice of subpoena" from his computer, he did not keep the "affidavit of service", But then I looked into the returned file more, and I found the "Affidavit of service" on Dr. Jian Qi, so on March 29, 2007, I moved to present the found "Affidavit of service". Judge Sand left it to the defendant's attorney Madden, Madden looked at it and claimed that it was an "affidavit of service", not "Notice of Subpoena", the court would not allow me to talk about it any more. . 27-28

E. On p. 4 of the Summary Order, the Second Circuit court claimed that my law suit primarily involved alleged discriminatory acts occurring prior to the filing of my complaint in 1998. But my medical doctor's testimony would be on the harmful and wrongful assignment of disposing huge amount of volatile chemicals, which I testified specifically as "Retaliation". And I specifically questioned Patel at trial about that and other questioned matters which I also questioned Sarikhani, such as bad memorandums and bad evaluations, which belonged to continuous Retaliation. 28.

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5. In my Proposed Pretrial Order, I listed the complaints of the Bureau chemists with NYS Human Rights, at trial I tried to talk about how racism the Asian Indian Lab Chiefs were, but the trial judge forbade me to. 30-31

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PETITION FOR WRIT OF CERTIORARI

Petitioner Ming Yen Hou respectfully petitions for a **Writ Of Certiorari** to review the decision and order of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Second Circuit affirmed the decision of the United States District Court for the Southern District of NewYork to dismiss the law suit complaint filed by the petitioner versus New York City Department of Environmental Protection.

Jurisdiction

On April 9, 2009 the United States Court of Appeals for the Second Circuit affirmed the District Court's decision that dismissed the petitioner's law suit versus New York City Department of Environmental Protection of Discrimination Because of race and National origin; ADEA and Retaliation. On May 7, 2009, the Second Circuit entered a judgment mandate dismissing the appeal. The jurisdiction of the court is invoked pursuant to 42 U. S. C. # 200e-2;venue: 42 U.S.C. #2000e-5(f)(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Title VII of the civil rights acts of 1964, 42 U.S.C. # 2000 e –2 to 2000 e-17,includinding Ritaliation provision, venue 42 U.S.C. #2000 e –5 (f) (3) and Age Discrimination in Employment Act of 1967, 29 U.S.C. # 621-634, (amended in 1984, 1990 1986.

STATEMENT OF THE CASE

The petitioner filed law suit complaint with U.S. District Court, Southern District of New York on March 2, 1998, the grounds were Discrimination because of race and national origin by title VII; and Age Discrimination; and checked on continuous retaliation. She filed charges with EEOC in 1997 (and Internal discrimination complaint in 1994); Defendant's attorney filed Motion to dismiss the case, the motion to dismiss was denied in entirety by trial Judge in August , 1997.

UNLAWFUL DELAY OF PROMOTION BY CIVIL SERVICE EXAMINATION:

Before commencement of the law suit, the civil service promotion list to Associate chemist was established on 5/07/97, I was ranked list no. 1. A certification from City Personnel to replace provisional Associate Chemist in compliance of NYS Civil service Law # 65 was sent to NYC DEP on May 30, 1997, but DEP would not comply with the law to replace its provisional Associate Chemist., so DEP Would did not set its hiring pool. A re-certification to DEP on November 6, 1997 was sent to DEP, at that time, DEP already got additional positions for Associate Chemists, so DEP set its hiring pool. Since DEP got additional positions for Associate Chemists, so DEP would not have to replace its provisional Associate chemists. I was appointed from the list on November 24, 1997. Appendix P. A66-A68.By NYS civil service law , # 65, that provisional employee must be replaced by eligible within four months after the establishment of civil service list. Section 65 of NYS civil service law also stated:" No provisional appointment shall continue for a period of excess of nine months" those

provisional appointments including then lab supervisor Sarikhani 's, had been for years already. Thus my appointment was almost delayed three months. Hiring pool was for DEP to set upon receipt certification from NYC Personnel, it was hiring pool set up by the agency. When DEP did not replace their provisional
Associate chemists, Sarikhani continued to be my lab supervisor, Patel and Sarikhani exercised their power to retaliate against me because of my filing discrimination complaints. Since I ranked list no. 1 on the promotion list, if DEP complied with the State Law and set up hiring pool within 30 days after receiving the first certification of May 30, 1997, I should have replaced Sarikhani in June. As the first permanent (civil service) Associate chemist in that Lab, I would have been the legitimate lab supervisor Associate Chemist , level II. NYS law & My letter to mayor about the two certifications. There was "list progress" published in the paper "The Chief", which gives certifications made. Appendix p. A67- A68 .

DENIALS OF PROVISIONAL PROMOTIONS:

a. In year 1998, there were two provisional promotions (not required by civil service exam.) to Associate Chemist, level II and level III., namely Vikram Shah was promoted to ,(stated in Defendant attorney's letter of of 4/7/00 in docket no 78,) and Trikam Patel was promoted to level III of Associate chemist, (recorded in Patel's personnel portion, in docket no. 100.) All the documents which I refer to in this Booklet are in the Appendix of my appeal to the USCA2 for the second circuit
b. Then in year 2000, Patel was appointed Administrative Director of Labs, (Exhibit in docket no. 78).
c. In 2001 there were two provisional promotions to Associate Chemist, level II, including one for . Sarikhani. Appendix p.A56-A60 . I was denied of all of those provisional promotions, in spite of my proven record of

superior performance and contribution to DEP methods, which were all been proven by deposition transcripts on then colleague (Odorfer) and supervisor (Trikam Patel). And outside expert witness evaluations---not necessary, just by deposition transcripts are suffice. Appendix p. A69-A72.

ADEA CLAIM WAS ESTABLISHED IN 1999.

I was the oldest one in the Bureau Chemists, (my date of birth has been in the law suit complaint form supplied by the pro se office, written as 6/29/31, since my law suit complaint included age discrimination. Although in my Motion of May 4, 1999, which resulted that conference, in the "Affirmation", item (4), I requested for chronic listing of the ages of the chemists who were chosen for promotions within the Bureau of Wastewater Pollution control,. Magistrate Judge Henry Pitman issued an Order on June 24, 1999, in item 2 of the Order, it was "No later than August 16, 1999, defendant shall produce those portions of the personnel files of the following individuals that provide age, education and employment history." Appendix P. A54-A55.

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AT TRIAL I TESTIFIED ABOUT THE COMPENSATIONS I SEEK: (On March 26, 2007 and April 2, 2007,) (And in my Post Trial Brief and Trial Brief, I wrote accordingly, which included compensation due to denials of promotions, about $692955 and monetary compensation for my pain and suffering; and the reimbursement of legal expenses---in 8/07 it was already about $84000, now it would be more, it was written in my appeal brief p. 28-30, and Post Trial Brief p. 25-26, and the appendix to appeals court p. 1047-1080, which gave calculations ordered by judge Sand, (Trial transcript p.7, line 17-21). I also testified about it on (trial transcript p. 474-476.)

Evidence established by Deposition about my superior performance and I was a Quiet Worker; Never had any Problem With Coworkers. All three former coworkers Testified positively about me. And I have proven as a good supervisor material. Appendix P. A73-A76.

Then in 2002, our deposition s on my then colleagues and supervisors, evidence was established that I accomplished and contributed to the Special Projects Labs of the Bureau tremendously in making the wrong methods right and making the incapable lab to accomplish the "Track Down" project of Pcbs. And my then colleague Odorfer testified in deposition and in trial that I was a quiet worker, and he never knew that I had any problem with any one except with the lab supervisor, (Odorfer testified so even at my trial) because Sarikhani and Patel attacked me wrongfully, Sarikhani, who was a provisional Associate chemist, who did not make the list of the Promotion exam. , but I was a civil service chemist, I ranked list no. 1 in the promotion examination Appendix p A63-A67.

TWO SIDES "STIPULATION", WHICH I PROTESTED VEHEMENTLY.

During the law suit, by the Order of magistrate Judge, defendant's attorney had to answer my Interrogatories, in the letter dated Feb. 20, 2001, then defendant's attorney L. Kaplan, gave reasons of denials of promotions purely on technical strength. Appendix p. A60-A63. **That is not changeable**. But later after I proved my technical strength and superior contributions during my tenure at DEP by depositions on my colleagues and supervisors, (also by the evaluation statements of outside expert witness.) **then before trial, the defendant's attorney made stipulation with the judges that no technical things I was permitted to present at trial, only defendant could charge me on "Personality". Such two sides stipulation was protested by me vehemently, and the trial judge firmly forbade me**

to talk any thing about my technical work, see excerpts of trial transcript, appendix P. A51-A53;A69-A72 . And the personality attack on me was not proven, the personality attack was only by a letter of 1975, (more than 30 years ago). For the mistreatment of 1975-76, I quit the job with DEP, (later returned to DEP due to the lay off of my Transit Authority Job By civil service practice.) After I quit the job with DEP in 1976, I went to NYS Department of Labor to apply for unemployment insurance benefits, after investigation, I was vindicated of any fault, I got unemployment insurance benefits, which was very unusual, when one quit a job, one could not get unemployment insurance benefits. There is a letter written by NYS Labor Dep't. to NYC DEP of 7/30/76, It stated:" Claimant left her job with your Agency for reason which to her were compelling. The circumstances under which she left are not disqualifying ."I testified about it at trial. Appendix p. A72-A73.

DEFENDANT'S FALSE NEW CLAIMS IN THEIR "REPLY" TO MY OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND JUDGE PITMAN WRONGFULLY USING THE FALSE NEW CLAIMS OF DEFENDANT'S "REPLY" TO DISMISS MY CLAIMS OF DENIALS OF PROMOTIONS OF 2000 AND 2001 AND MY "ADEA" CLAIM. Appendix p.A10-A12.

My then attorney Saurborn did not receive defendant's "Reply", defendant's attorney raised new claims: a. Defendant's attorney claims that I never protested over the denials of promotion of 2000 and 2001. That was entirely false. I not only wrote letter to Judge Sand and to then defendant's attorney to protest, I also filed a motion on January 29, 2002, in which I specifically protested the denials of promotions of 2001. And we had forensic accountant sent his reports (calculation) on

economic damage to me due to the denials of promotions. That forensic accountant sent his report to defendant's attorney on December 31, 2002, (dead line of Discovery.) in which report, we protested denial of prom. Of 2000 and all other times of denials of promotion. But the magistrate judge in his Report and Recommendation of Feb. 2004 used the "Reply" of the defendant's attorney and claimed that I never protested the denial of proms. Of 2000 and 2001, and he dismissed my claims of those denials of promotions. (How wrong it is!) See Federal Civil Procedure 15 (b), and appendix p. A56- A60.
b. The ADEA claim, defendant's attorney in defendant's "Reply" claimed that I claimed on ADEA was because I was assigned to "Inventory work", which was strenuous to one of my age, magistrate judge Henry Pitman went along with defendant's attorney, and he dismissed my ADEA claim by R.R. But the fact is that the ADEA claim was already established at beginning of the law suit. In our first conference on June 16, 1999, I told Magistrate Judge Pitman since the law suit included Age Discrimination, I would ask defendant to give me the date of birth of chemists of the Bureau who had been promoted over me. Please see Judge Pitman's Order of June 24, 1999, (Appendix p A54-A55), he Ordered that defendant give a list of names, their personnel portions that provide AGE, education and employment history to me. But when writing R.R., Judge Pitman was completely taken by defendant attorney's false claim in "Reply" and dismissed my ADEA claim

CONTINUOUS RETALIATION:

During the course of law suit, there were continuous Retaliation to me by defendant. Even in the R. R. of Judge Pitman, when he wrote about "Retaliation",

On its p. 57, Judge Pitman described the adverse job action after I filed complaint with DEP's EEO office in July , 1994; after I filed Charges with EEOC on Nov. 6, 1997 ;" plaintiff filed her complaint in federal court on March 2, 1998. Later that same month, Sarikhani issued plaintiff a warning memorandum, and thereafter, a quarterly evaluation dated May 28, 1998, which rated her performance as 'conditional'. Those poor evaluations eventually led to DEP's chief of personnel warnining plaintiff that she would be demoted if her performance did not improve."So Judge Pitman denied defendant's motion to dismiss My "Retaliation" claim. Appendix p. A12-A13. Most of those Retaliation events Written by Judge Pitman were testified by me at trial of 4-2-07. On p. 13 and 14 of my appeal brief, I specifically wrote what I testified on April 2, 2007. I wrote a separate section "C." for "Retaliation", in item 1 of section C, I listed three bad memos after each time of some moving of my complaints of discrimination. (appendix p A26-A29, my Post Trial Brief). In addition , I testified on 4-2-07, the very harmful assignment of disposing huge amount of volatile chemicals in lab hood, which violated Osha's rules, especially I had to dispose those chemicals in a dysfunctional fume hood. I testified at trial and questioned the Asian Indian Lab Chief about it, (the Osha's rule forbade using lab hood to dispose volatile chemicals, and it required the flow rate of the hood must be minimum of 100 ft/min., the hood I was assigned to use only got flow rate of 31/66, 31 ft/min when the front panel fully open, 66 ft. /min, when the front panel was half open, measured by third party inspector on the day of accident.) Please see Appendix p. A78 , I testified about that horrible assignment at trial, and I questioned the Lab chief Patel about it at trial. (See appendix p.A29-A31). I wanted my doctor (Dr. Russell Laudon) to testify about the injuries and the complications from it, which I suffered from that assignment, (exposure to volatile

chemicals,) Judge Pitman permitted it, but Judge Sand sent Doctor Russell Laudon away when Dr. Laudon came to court to testify. Appendix p. A24-A25 & A 77-A78. (Excerpts of trial transcript.) I managed to enter my Exhibit 26 at trial, it gave good amount of evidence of injury caused diabetes. I also gave evidence about my eyes and heart ailments developed by the diabetes which in turn was caused by the chemical exposure.And in my appeal brief, p. 19-20, I wrote about theose things, and I wrote that in my entered evidence, exhibit 26, it included the assignment sheet of 5/14/02, lab supervisor Sarikhani assigned Asian Indian chemist Chandy to list and pack the volatile chemicals and then they would send those to hazardous company to dispose them. (I entered this exhibit 26 at trial, recorded on p. 404 of trial transcript). I clearly written that it was not only discrimination, it was retaliation. I testified specifically about retaliation events on April 2, 2007, I repeatedly testified those events as retaliation, and I testified as the classification as "Retaliation", please see appendix p. A19-A21 , which are excerpts of trial trail transcript. The chemical exposure injuries have been whole body, in my entered exhibit 26, it gave good amount of volatile chemical caused diabetes, which would cause complications for heart and eye ailments. I got those ailment gradually. Medical doctor's advice are entered at my post trial brief, Appendix p. A76-A80. ,and I put in my eye doctor's statement about my glaucoma and dry eye sydrome (since 2004), and my abnormal EKG since 2005.

At trial I also questioned the Asian Lab Chief Patel about the fact that from January to June of 1995, he put me on a non working machine for about six months, he admitted that the results were not recorded and not used. Appendix p A 25-A26. That was after I made complaint with DEP EEO office on discrimination. He first took me off the original busy station "Volatile

Organic Compounds", than he put me on the nonworking useless machine, than from July of 1995, he put me to wash dirty glass wares full time for more than half year. I also questioned him about that at trial, other Chemists never been treated like that, even in Judge Pitman wrote in R.R. about my then colleague Boris Sheynker's deposition transcript submitted by defendant's attorney.I also questioned Boris Sheynker at trial , he admitted It completely that he was not assigned much to wash others' dirty glass wares except when he first started, when he did not know the work there. They did it to me for about 8 months after I was in that lab about one and a half year All those things were written in my Appeal Brief, and gave reference of USCA2 Appeal appendix page no. for the trial transcript.

But Judges of Court of Appeals denied my "Retaliation" claim!

EVIDENCE OF DISCRIMINATION:

a. About evidence of discrimination, even without Dr. Jian Qi's deposition transcript, it is actually established.At trial I questioned lab chief Trikam Patel and confirmed that there were only two Chinese chemists in his Special Projects labs 1987 through 2002 , December , 2002 was his deposition time. Appendix p.A38-A39. And I proved that there were plenty Chinese chemists available Appendix p. A41-A43. And at trial I questioned Patel that he fired Dr. J. Qi by a bad evaluation in 1992, and I presented the evaluations of mine for 1994 and Dr. Qi's in 1992 at trial. Both Chinese chemists got such horrible evaluations. Those things I specifically wrote in my "Post Trial Brief" and my "Appeal Brief", and I gave USCA2 appendix and Trial transcript references, all transcripts were part of my USCA2 appendixes . And I proved that there were plenty Chinese chemists available. Appendix p. A38-A43..

b. About "Affidavit of Service" on Dr. Qi, I presented it at trial on 3/29/07, two days after my former attorney Saurborn appeared in court with "Notice Of Subpoena" on 3/27/07. See excerpts of trial transcripts, Appendix p. A43-A46. . But the court left the matter to defendant's attorney Madden to decide, Madden said that it was an affidavit of service, not "Notice of Subpoena", and Madden rejected it, but he was shown "Notice of Subpoena" by Mr. Saurborn two days earlier at trial, see excerpts of transcripts, appendix p. A44. . Since we had transfer of attorney earlier, Mr. Saurborn returned the most of the file to me, after the trial day of 3/27/07, I searched the massive returned file again, and I found the "Affidavit of service ", so I made sure to present it at trial day of 3/29/07. The trial court just denied me of a chance. Appendix p. A43-A46. US Court of Appeals, Second Circuit wrote that there was only "Notice of Subpoena", but no "Affidavit of Service", that was entirely wrong. I wrote those things specifically in my "Appeal Brief", p. 17-18. .

c. And I presented the sworn complaint with NYS Human Rights of my other chinese colleague at the Process Control Labs of the Bureau, in fact I was transferred to the Special Projects Lab from the Process Control Labs in Feb. of 1994, while at the Process Control Lab, I was also under the other Asian Indian lab Chief Purnima Dixit. At trial I questioned Dixit and read her deposition transcript , in the deposition transcript Dixit admitted that she openly said at the Jamaica Process Control Lab:" **We Indians are Aryan, Hitler said we are best." It is on p. 70 of her deposition transcript, and she even sent to my former attorney Saurborn an "Errata" about the title and name of the Indian chemist, to whom she directly and openly said those racial slur. e Appendix p. A46-A49.** .

With tremendous evidence that proved DISCRIMINATION AGAINST CHINESE CHEMISTS in the chemical labs of Bureau of Wastewater Treatmentof NYC DEP, the Second Circuit of US Court of Appeals still Claimed that Discrimination was not proven to go along with The local court, WRONG, WRONG, WRONG!!!

THE TRIAL JUDGE FORBADE ME TO USE DEPOSITION TRANSCRIPT FOR IMPEACH PURPOSE TO PIN DOWN TESTIMONY OF IMPORTANT WITNESS.

Regarding to an important witness, Richard Ordorfer, my then colleague, we had his positive testimony pinned down at depositions in October of 2002. But when he was at my trial to testify, I was forbidden to use his deposition transcript for impeach purpose, the trial Judge Sand wanted him to testify a new, even when Odorfer claimed that he only could testify what he remembered. (deposition was in October , 2002, and the trial was in March of 2007). And I wrote in my Post Trial Brief and in my Appeal Brief that Odorfer later was my tenant in the Rear Bungalow after I retired, between landlord and tenant there was dispute, I had to evict him, so personal relation became hostile, I did need To read his deposition transcript to pin him down. But still, Odorfer testified some things to support my case, but about technical things , which were not allowed for me to talk about , I could not get any chance to talk or pin down witnesses. **But the fact Judge Sand would not allow me to read deposition transcript for impeach purpose on Odorfer, It is entirely un-ethic, it was intentional to impose injustice .See excerpts of trial transcripts, Appendix p. A50-A52.**

When USCA for the Second Circuit wrote to affirm the

Judgment of the local court, it never elaborate about my "ADEA" claim, and it never mentioned about my very much emphasized and repeated claim of "Retaliation", it is terribly wrong , ESPECIALLY when the US Supreme Court has Expanded scope of Anti-Retaliation Law on June 22, 2006. Appendix p. A15-A18.

SUMMARY OF ARGUMENT

UNLAWFUL DELAYED PROMOTION:

I had to conduct my trial as Pro Se, the trial Judge disrespected my rights and displaced such disgust and oppression since I was Pro Se. Judge L. Sand always cut me off when I tried to present my case, he even forbade me to to use deposition transcripts to pin down witness' testimony. Hiring Pool was up to DEP to set up . As I wrote in "Statement of the Case", p. 2-3, the so called "hiring pool" was none other than set up interview appointments, DEP could set up the "hiring pool " any time within 30 days after receiving certification for the list from NYC Personnel. DEP only set it up after second time of certification of the promotion list to Associate Chemist from NYC Personnel. As I explained on p. 2-3 of this document, in the "Statement of The Case". How can any court holds the time of "hiring Pool" to justify the delayed promotion? The delayed promotion cost me the opportunity to replace the provisional Associate Chemist I , the lab supervisor Sarikhani. Because DEP purposely delayed the date of hiring pool the approval of additional Associate while awaiting for the approval of additional slots of Associate Chemist. Thus I lost the opportunity to become Lab supervisor, since I ranked list no. 1, I would be the first to be appointed. Associate chemist II, level II was the standard level for chemical lab supervisor in the Bureau." Associate Chemist" is a civil service title, level I, II, and III are assignment levels.

DENIALS OF PROVISIONAL PROMOTIONS:

There were seldom civil service promotions in recent years, because NYC personnel seldom give civil service examinations any more. So almost aa the promotions were provisional. Whem it was only promotions within the title, i. e., from level I to level II and from level II to level III of Associate Chemist, it was provisional promotion Once I was appointed from civil service promotion list to Associate chemist as list no. 1 on November 24, 1997, I attained highest city civil service title of chemist. Then in 1998, there were two provisional promotions to Associate chemist; level II and level III, namely Vikram Shah was promoted to level II, and Trikam Patel was promoted to level III of Associate Chemist. As a result, in 2000, Trikam Patel was promoted to Administrative Director of Labs for the same jobs of the level III of Associate Chemist. And in 2001, the provisional lab supervisor was promoted to level II of Associate Chemist.

I got proven record of accomplishments, and I made the wrong methods right and made the incapable lab capable because I taught them to succeed the "Track Down " project for detecting Pcbs in sewage. Those were all proven by depositions on my then colleagues and lab Chief Patel. But I was not allowed to talk about technical things at trial due to the two sides "stipulation" under my vehement protest.

Of course I was denied of all those provisional promotions.

MY ADEA CLAIM WAS ESTABLISHED IN 1999 FOR DENIALS OF PROMOTIONS BY AGE DISCRIMINATION WHICH STARTED IN 1990, 1992 AND 1993 AND MY DENIALS OF PROMOTIONS OF 2000 AND 2001 WERE PROTESTED OVER AND OVER,

BUT MAGISTRATE JUDGE PITMAN TOOK THE FALSE CLAIMS OF DEFENDANT IN DEFENDANT'S "REPLY', WITHOUT EXAMINING THE COURT ORDERS AND DOCUMENTS OF MOTIONS, AND WITHOUT INQUIRY WITH MY THEN ATTORNEY BEFORE HE MADE SUCH HARMFUL WRONG MOVE MERELY BY DEFENDANT'S FALSE NEW CLAIMS IN DEFENDANT'S "REPLY", I WAS ADVISED BY LAWYERS THAT NO NEW CLAIMS WERE SUPPOSED TO ADD IN "REPLY", AND NO ANSWER WAS SUPPOSED TO BE SENT IN. MAGISTRATE JUDGE MADE IMPORTANT DECISION BY **ABUSE OF** DISCRETION, AND DISTRICT COURT JUDGE BLATANTLY DENIED OUR MOTION PAPERS INTENDING TO CORRECT THE WRONG DISMISSALS.(My MY FORMER ATTORNEY IN" OPPOSITION TO THE R.R." TO CORRECT THE DISMISSAL OF 2000 AND 2001 DENIALS OF PROMOTIONS, AND I, AFTER BECAME PRO SE AGAIN, WITH PERMISSION OF DISTRICT COURT JUDGE SAND, FILED MOTION "CORRECTION" TO CORRECT THE WRONGFUL DISMISSAL FOR MY ADEA CLAIM. BOTH OF OUR ATTEMPTS WERE DENIED BY JUDGE SAND.

My ADEA claim was a claim based on denials of promotions, See p. 4 of this document, Judge H. Pitman even issued an Ordep. 10-11 of this document.r on June 24, 1999, (after the conference of June 16, 1999.) In its item 2, it was :" No later than August 16, 1999, defendant shall produce those portions of the personnel files of the following individuals that provide age, education and employment history."

It was too obviously wrong that Magistrate Judge H. Pitman in his R.R. of Feb. 2004 dismissed my ADEA claim and my claims for denials of promotion of 2000 and 2001. Judge Pitman on p. 43 of his R.R. cited defendant's Memorandum of Law (Reply) at 12, and wrote " plaintiff's sole argument with respect to age appears to be that she was forced to perform inventory despite her age." .Appendix p. A11.

And on p. 37 of the R.R., Magistrate Judge H. Pitman cited Defendant's Memo at Law at 7, (Reply), and claimed: "there is no mention of those promotions in plaintiff's complaint, and plaintiff has not made a motion to amend her complaint to include these claims. While I appreciate that Rule 15 of the Federal Rules of civil procedure provides for liberal amendment of complaints, there must be at least some notice to the opposing party;" appendix A11. The fact is that I surely notified the opposing party about my protest against the denials of promotions, in my letters to then defendant's attorney , and to Judge L. Sand, and most obviously my Motion was filed on Jan. 29, 2002., in which I protested in the "Notice of Motion" about denials of two provisional promotions of 2001, and my forensic accountant put in the denial of promotions of all the years, which included the denial of promotion of 2000. That report of Economic damage was sent to defendant's attorney on December 31, 2002, by the dead line of Discovery. Defendant's Motion for Summary was filed in the early part of 2003. Then my then attorney Saurborn filed in my "Declaration In Opposition To Defendant's Motion For Summary Judgment " on April 13, 2003. And Defendant's Memorandum of Law In Reply To Plaintiff's Opposition, And In Further Support Of Defendant's Motion For Summary Judgment" By docket no. sheet of the District court was April 25, 2003.) was filed in after our "Opposition".(by the sworn certificate of service of my then attorney Saurborn, it was April 15, 2003).

Please see Federal Civil Procedure 15 (b), and appendix p. A55-A60. .

Because in Defendant's "Motion For Summary Judgment", defendant did not raise those claims (ADEA and Denials of promotions in 2000 and 2001, so those were new claims, defendant should not have raised new claims in their "Reply', And Magistrate Judge should have checked at his Own Orders and Motion Documents , and regarding to denials of promotion in 2000 , he should had known the letter of former defendant attorney Leonard Kaplan's letter to me , dated December 18, 2001, it was reply to my protest over Patel's promotion to Administrative Director of Labs, It was kept secret, so I was not certain that it was in 1999 or 2000. He wrote as: "Please be advised of the following: (1). Trikam Patel was not appointed to the position of Administrative Director of Laboratories in 1999. He was appointed in 2000." That letter was put in Exhibit "H" of my "Declaration In Opposition To Defendant's Motion For Summary Judgment.' Filed with court on April 15, 2003. And in my then attorney Saurborn's "Plaintiff's Declaration In Opposition of R.R. Feb. 17, 2004" filed with court Feb. 27, 2004, in its Exhibit "H", it was the Report For Economic Damage to me by our Forensic accountant, in it therewere damage done to me by the denial of promotion of 2000 and all other denials of promotions. That report was sent to defendant's attorney at December 31, 2002, the dead line of Discovery.

Judge Pitman dismissed my ADEA claim and my claims of denials of promotions of 2000 and 2001 by discretion, and he relied on the false claims of defendant's attorney, he did not check official files such as Orders: Motions filed. After we filed "Opposition to the R.R.on Feb. 27, 2004, and the "Correction" of June 14, 2004, by permission of Judge Sand. neither Magistrate Judge nor District court Judge Sand would correct those obvious wrong things. Appendix pA10-

A14. for the appropriate portion of R.R. and "Reply" of defendant. And see p. 6-7 of this document.

TWO SIDES " STIPULATION ", WHICH I PROTESTED VEHEMENTLY.

Formerly defendant's attorney Kaplan , representing the management and supervisors of the Bureau labs, answered my "Interrogatories" by his letter of Feb. 20, 2001, it gave reasons of denials of promotions purely on technical strength and seniority. Appendix p. A60-A63. **THOSE ANSWERS ARE NOT CHANGEABLE .But before trial, because I had shown tremendous evidence of technical strength by deposition and the reports of outside expert witness, the defendants attorney made stipulation with the judges that I was not permitted to present any technical things at trial, only defendant could attack me on "Personality". At trial, Judge Leonard Sand scolded me and forbade me to talk about my technical work. And the personality attack was not proven. See p-5-6 of this document.**

CONTINUOUS RETALIATION

At trial of 4-2-07 I presented repeatedly about the continuous retaliation by defendant, (of course I checked "Continuous retaliation" on my law suit complain tform from Pro Se office). I wrote on my "Post Trial Brief" and my "Trial Brief" repeatedly about the retaliation acts such as the three bad Memorandums; bad evaluations , which all happened after some complaints of discrimination. Even Magistrate Judge Pitman in his R.R. denied defendant's claim on "Retaliation". See p. 7-10 of this document.

And I specifically testified at trial about the most harmful assignment of April , 2002, I was assigned to dispose huge amount of volatile chemicals by the defective laboratory hood, in violation of Osha's rules. That assignment caused me terrible diabetes, which as complication developed my

heart failure and eye ailments, (I put those record in Post Trial Brief.) Appendix p. A78-A80. **US Supreme Court expanded Scope of Anti-Retaliation Law on June 22, 2006On the case of Santa Fe** Railway v. Sheila White, on the certiorari to the US Court Of Appeals for the Sixth Circuit, No. 05-259. Sheila White was merely assigned to a dirtier and more laborious job, but I was assigned to an unlawful, unnecessary harmful job to dispose huge amount of volatile chemicals by defective laboratory hood, it was shown in lab supervisor's assignment sheet about one months after my injury that an Indian Chemist Chandy was assigned to list the volatile chemicals and the lab supervisor Sarikhani would pack those up with Chandy and send the packs to hazardous companies which got special set up to handle the hazardous chemicals. (Entered as evidence at trial . See p7-10 of this document.) My doctor , Russell Laudon even came to court to testify about my chemical vapor caused debates and its complications, the trial judge would not let him testify and sent him away. I entered as evidence of my Exhibit 26, which included Dr. Laudon's letter and the results of my blood glucose before and after the injury, I also put those documents in my Post Trial Brief. , my blood glucose went from100 mg/dl to approx. 580 mg /dl, a terrible figure, and I put in doctor's advice about how harmful diabetes are to eyes and heart and the statement of my eye doctor that I had multiple eye ailments and my abnormal heart EKG results in 2005, all in my "Post Trial Brief." EKG all in my "Post trial brief". Appendix P.A76-A80.

Any mistreatments after the commencement of legal actions on Discrimination are surely counted as retaliation, but the terrible and mounted "Retaliation acts" are not counted by the local court and the Second Circuit , it is certainly wrong.

OVERWHELMING EVIDENCE OF DISCRIMINATION IS DENIED BY COURTS.

Please read p. 10-11.of this document.

a. At trial, I questioned lab chief Trikam Patel and confirmed that there were only two Chinese chemists in his Special Projects Labs 1987 through December, 2002. (by deposition time of December, 2002, because I had to use deposition transcript on him to pin down his trial testimony.)And Patel fired Dr. Jian Qi in 1992 by a bad evaluation. And I presented the terrible evaluation of mine for 1994 and compared Dr. Qi' evaluation of 1992 with it at trial. I had been long tenured before I ever worked under the Asian Indian lab chiefs Dixit (at the Bureau Process control labs)and Patel(at the Special Projects Labs starting Feb., 1994), otherwise I would certainly been fired by the Asian Indian Lab chiefs.

b. About "Affidavit of Service" on Dr. Qi, I presented it at trial on 3/29/07, two days after my former attorney Saurborn appeared in court with "Notice of Subpoena"on 3/27/07.Those things are proven by the excerpts of trial transcript. Because we had transfer of attorney Mr. Saurborn returned most of the files to me. I did not find the "Affidavit of Service "earlier, then I found it in the returned file and presented to court. See appendix p. A43-A46. (Excerpts of Trial Transcript; and Section b of p. 11 of this document.)

Both "Notice of Subpoena " and "Affidavit of Service were presented to court and to the Defendant's attorney.

C. At trial I presented the sworn Complaint with NYS Human Rights of my former colleague Yvonne Huang of the Process Control Labs of the Bureau, because I was transferred from the Process Control Labs to the Special Projects Labs in Feb. of 1994, while in the Process Control

Lab , I also worked under the other Asian Indian lab chief Purnima Dixit. **At trial I questioned Dixit and read her deposition transcript, in her deposition transcript, done in December of 2002, Dixit admitted that she openly said at Jamaica Process Control Lab :"We Indians are Aryan, Hitler said we are the best"** That Quote was in Yvonne Huang's Sworn NYS Human Rights's complaint. It is on p. 70 of Dixit's deposition transcript, and Dixit even sent a sworn "errata" to my former attorney Saurborn about the title and name of the Indian chemist to whom she openly said those racial slur.. Dixit denied both Yvonne Huang and me of the provisional promotion to Associate Chemist I in 1993. Instead, Dixit promoted her country woman, an Asian Indian Lallu Manachan to that position, who did not even have a Bachelor's degree. I questioned Dixit about those things at trial ,and excerpts of Dixit's deposition transcript, appendix p.A46-A50.

The discrimination against Chinese chemists in the Bureau chemical labs are proven beyond any doubt. I got information even at the present , there is noChinese chemist in the Special Projects Labs about total 25 lab personnel; and there is still only one Chinese chemist retained in the lowest title of Assistant chemist for about 30 years, his name is Peter Chang, among totally about 50 lab personnel in the process control lab.

But in the central labs of Bureau of WaterSupply of DEP, (on the same floor of my former working place,)there were a lot of Chinese scientists and Chemists, see their telephone list. Appendix p.A41-A43. That proved that there were plenty of Chinese chemists and scientists on market, but the Asian Indian Lab Chiefs would not hire nor keep Chinese chemists.

THE PICTURE WAS BEAUTIFUL OR UGLY?

District court judge forbade me to use deposition transcript for impeach purpose to pin down testimony of important witness:

At trial I was forbade to use deposition transcript to pin down testimony of former colleague Richard Odorfer, while deposition was done in 2002, the trial was in 2007, and Odorfer's memory was faded a bid. And Odorfer later was my tenant in the Rear Bungalow (2004-05) after I retired, between landlord and tenant there was dispute, I had to evict him, so personal feeling was bad. I did need to read his deposition transcript to pin down his true testimony. Although Odorfer still testified things to support my case, but he testified much more to support my case at deposition. See excerps of trial transcripts, appendix A. A32-37; A50-A54.

THERE HAS BEEN HORRIBLE INJUSTICE IN THIS CASE, IT IS EXTREME ABUSE OF "DISCRETION" OR "INTENTIONAL"!

The case got tremendous evidence, the District Court judges did everything to depress my rights and chance of justice!!!

The Second Circuit Court went along with the District court; completely disregard the truth and facts which I repeatedly emphasized with references and evidence, it is not "over look," it surely was abuse of Discretion and looked like Intentional to make me bear injustice.

BRIEF OF THE SUMMARY ORDER OF THE SECOND CIRCUIT; AND MY PROTEST.

The whole writing of the Summary Order is

prejudice in favor of the Opinion Of The District. Court

a. On page 2 of the "Summary Order", about the district court's partial grant of summary judgment, there were two parts of it:

1. Age Discrimination that was already established in 1999. See the court order of Magistrate judge Pitman of June 24, 1999, Appendix p. A54-A55. In the affirmation of my Motion of 5/4/99 ,item (4), I requested for a " chronic listing of the ages of the chemists who were chosen for promotions within the Bureau of Wastewater Pollution Control, starting 1990. Also give names of those chose...., give document which state the date of birth of mine, ...". Then in Magistrate Judge Pitman's Order of June 24, 1999, in its item 2, "No later than August 16, 1999, defendant shall produce those portions of the personnel files of the following individuals that provide age, education and employment history...." Appendix p.A54-A55.. My ADEA claim was based on denials of promotions. before Judge Pitman wrote the R.R. of 2/04, he did not even bother to look at his own Order, in his R.R. of 2/04, p. 43, item I, : " Claim based on age discrimination", he wrote: ".....(Def. Memo of Law at 12) Plaintiff's sole argument with respect to age appears to be that she was forced to perform inventory despite her age (Hou Dep. At 588-89)...", the so called "def. Memo of Law " was the "Reply " of defendant's, no new claims were supposed to be written in, and my former attorney Saurborn did not even receive a copy after the R.R. came out in 2/04, I had to go to the court house to make a copy for Saurborn of the "Reply". I wrote about the dismissal of my age discrimination in my appeal brief, p. 24-25. Please

see p. 4 and p.15-18 of this document. The Second Circuit Court is terribly wrong. And I wrote in my later Motion paper "Correction" about my claim of Age Discrimination and my claims of denials of promotions of 2000 and 2001, it is docket no. 100 , that Motion paper was with the permission of Judge L. Sand, but he denied my request to correct the errors.

2. The denials of promotions of 2000 and 2001, the Second Circuit Court claimed that it was also proper to grant summary judgment in favor of DEP (dismissing my claim of denials of promotions of 2000 and 2001.) I wrote clearly in my appeal brief in p. 23-24, please see p. 37 of the R.R., Magistrate judge Pitman cited def. Memo of law at 7, and wrote: " There is no mention of these promotions in plaintiff's complaint, and plaintiff has not made a motion to amend her complaint to include these claims. While I appreciate that Rule 15 of the Federal Rules of Civil Procedure provide s for Liberal amendment of complaints, there must be at least some notice to the opposing party; a complaint can not be a moving target Appendix p. A11 See Federal Rule of civil Procedure 15 (b), and trial of these issues may occur without such amendment. The so mentioned " these issues" are in the law text book, "Representing Plaintiffs In Title VII Actions, Volume 1, by Kent Spriggs." On its p. 331, section 846, "--Instances of Discrimination occurring after the filing of the charge ; "It is well established that acts occurring after the filing of an administrative complaint may be presented at trial without the necessity of additional administrative charges being filed if they are similar in nature or probably related to the original allegation. As the court explained in Gamble v. Birmingham Southern Railway Co. In

provisions of a consent judgment, the Eleventh Circuit stated that it would use Title VII principles including those applying to the construction of charges of discrimination. The charging party filed a charge that he had suffered discrimination in promotions. Thirteen months later he was denied a specific promotion. The defendant argued that a charge was required for the class member to litigate the legality of that promotion, but the court of appeals held that the original charge would suffice.

Federal Rule of Civil Procedure 15 (b) provides the proper tone., and trial of these issues may occur even without such amendment." Appendix p. A56-A60.

The fact is after Judge Pitman dismissed my age discrimination claim and my claims of denials of promotions of 2000 and 2001 by his R.R., my then attorney Saurborn filed "Plaintiff's Declaration In Support of her Objection to The Report and Recommendation, dated Feb. 17, 2004",.. In that document we presented all the protests which I sent to Judge L. Sand and then defendant's attorney , and in my Motion filed on January 29, 2002, (in that Motion paper I protested about the denial of promotions of 2001). And we also included a letter of then defendant's attorney of December 18, 2001. who answered my protest about the denial of promotion of 2000. And we also included the "Economic Damage" report by my forensic accountant, which included the denial of promotion of 2000. That report was sent to then defendant's attorney on December 31, 2002, (the dead line of Discovery .And see p. 3-4 and p. 14-18 of this document.

b.On p. 3 of "Summary Order", Second Circuit

Court claimed that I offered no evidence at trial to support my conclusion allegations that my supervisors were racist or that I suffered from disparate treatment due to my Chinese heritage.

That statement is entirely wrong. I was not allowed to read Dr. Jian Qi's deposition transcript at trial when I really should have been allowed to, because both the "Notice of Subpoena" (presented by my former attorney Saurborn on 3/27/07, a copy from his computer.) And the "Affidavit of Service" on Dr. Jian Qi was presented by me on 3/29/07 by a Motion at trial. Because we had Substitute of attorney, Mr. Saurborn returned most of the file to me, after 3/27/07, I looked at the return file again, I found the "Affidavit of Service", on 3/29/07, at court I moved to present it, but defendant's attorney said :"This is affidavit of service, not notice of subpoena." But "Notice of Subpoena ' Already had been presented two days earlier, the same defendant's attorney (co-counsel Madden) said: "This is Notice of Subpoena, not Affidavit of Service". Madden twisted around. Judge L. Sand would not allowed me to talk about the subject any more. See excerpts of trial transcript, Appendix p. A44-A46, see p. 10-11 and p.19-21. of this document.

At trial I presented my former colleague Yvonne Huang's complaint with NYS Human Rights and I questioned the Asian Indian Chief of Process Control Labs, Dixit. Both Huang and I worked under Dixit in Process Control Labs, then I was transferred to the Special Projects Lab in 2-94. Dixit denied the provisional Promotion to Associate chemist I in 1993 to both Huang and me, instead, Dixit promoted her country woman Monachan, who did not have a college degree. **And see "Evidence of Discrimination on p.**

10-11 and p. 19-21 of this document. When the Asian Indian Lab Chief openly shouted in front of the Chinese Chemist Yvonne Huang at Jamaica Lab: " We Indians are Aryan, Hitler said we are best!", She admitted in her Deposition transcript of December of 2002, and I questioned her at trial, she could not change it, How could we Chinese feel that we had been treated equally ??? Appendix p. A46-A49.

c. On p. 4 of the Summary Order , it claimed that the evidence showed I was considered difficult to work with, and had communication problem, those were not proven at all. It was entirely by a letter of Kirschner of 1975, (more than 30 years ago). And I quit the job with NYC DEP for the wrongful treatment of 1975-76, then I applied for unemployment insurance with NYS Department of Labor. After investigation, I was vindicated of any fault, and there was a letter from NYS to NYC DEP, see p. 5-6 of this document, and appendix p A72-A73. .

d. **On p. 4 of the Summary Ordor, it claimed that my former counsel was unable to produce an affidavit of service. That was entirely untrun and twisting. When we had tranfer of attorney, my former attorney Saurborn returned most of the file to me, He came to court on March 27, 2007 to present a copy of "Notice of Subpoena" from his computer, he did not keep the "Affidavit of Service" . But then I looked into the returned file more, and I found the "Affidavit of Service" on Dr. Jian Oi, so on March 29, 2007, I moved to present the found "affidavit of Service", Judge Sand left it to the defendant's attorney Madden, Madden looked at it and claimed that it was an "affidavit of service", not "Notice of Subpoena", the court would not allow me to talk about it any more, See the excerpts of trial transcript, Appendix p.A43-A46 Idid write those things in "Post Trial Brief"**

and my Appeal Brief. and gave references of the page numbers of trial transcript, all the trial transcripts were put in the appeal appendix. Second Circuit judges should have read my Briefs. Aappendix p. A43-A46 , those are excerpts of the trial transcript. And see p. 10-11 and p. 19-21 of this document. And the Asian Indian lab Chief Dixit of the Bureau Process Control Labs, said openly in Jamaica Lab:" We Indians are Aryan, Hitler said we are the best", she admitted it at deposition, p. 70 of the deposition transcript was read to her at trial. She can not change it. And my former colleague Yvonne Huang's sworn complaint with NYS Human Rights quoted that, because it was in Huang's presence.. See p. 11, sub. Item c of this document. See Appendix p. A46-A49.

e. On p. 4 of the Summary Order, the Second Circuit claimed that my law suit primarily involved alleged discriminatory acts occurring prior to the filing of my complaint in 1998. But my medical doctor's testimony would be on the harmful and wrongful assignment of disposing huge amount of volatile chemicals, which I testified specifically as "Retaliation . And I specifically questioned Patel at trial about that and other questioned matters such as bad memorandums and bad evaluations which belonged to continuous Retaliation. See p7-10; p.18-19 of this document..

f. All over the "Summary Order", the Second Circuit Court kept claiming that the district court did not abuse its discretion. But from record, it shows that the district court surely abused its discretion. Outstanding incidents:

(1). When my former attorney Saurborn and I surely presented both "Notice of Subpoena" and "Affidavit of Service", see excerpts of trial transcript, Appendix p. A43-A46, the court still would not allow me to read Dr. Jian Qi's deposition transcript.

(2). On my appeal brief, p. 29, Appendix p.A91-A95, I listed A,B, C, D, E, F, G items of abuse by defendant's attorneys. Judge Sand always silenced me and sustained defendant attorney's black lies, when there was nothing mentioned about the subjects at the two hearings of Magistrate Judge Pitman, (see the two Orders of Judge Pitman : From conferences of March 15 and March 22, 2007 before trial Appendix pA81-A95. Defendant's attorney would claim that those were precluded. **Such as items C, D, E.**

All over the record , it showed that Judge Sand abused his discretion to impose injustice on me.

(3). Judge. Sand 's "Opinion" emphasized so much of the letter of more than 30 years ago, (see his Opinion), that letter, without sworn in, was used extensively to destroy me. But Dr. J. Qi's sworn deposition in December of 2002, and both Notice of Subpoena and Affidavit of Service were presented to court and to defendant's attorney, but it was not allowed to be read at trial. That is surely abuse of discretion.

(4). **Magistrate Judge dismissed my claim of age discrimination and claims of denials of promotion of 2000 and 2001 merely by the new claims raised by "Reply" of defendant's attorney, the judge did not check at his own Order , nor my Motion papers, and he would not bother to inquire with my then attorney, so that we could have a chance to tell him the truth He dismissed my age discrimination claim and claim of denials of promotions 2000 and 2001, <u>that surely is abuse of discretion. And Judge Sand refused to correct those errors.</u>**

REASONS FOR GRANTING THIS PETITION FOR A WRIT OF CERTIORARI:

1. Overwhelming evidence of discrimination, see p. 10-12; p. 19-21 of this document.

2. Proven continuous Retaliation, see p. 7-10; p. 18-19 of this document. There has been an expanded Scope of Anti-Retaliation Law by US Supreme Court on June 22, 2006, on the case of **Burlington Northern &** Santa Fe Railway v. Sheila White Certiorari to the US Court of Appeals for Sixth Circuit, No. 05-259. Sheila White was merely assigned to a dirtier and more laborious job, but I was assigned to an unlawful, unnecessary harmful job to dispose huge amount of volatile chemicals by defective laboratory fume hood. More details on p. 18-19 of this document. Appendix p. A15-A18.

3. My ADEA claim was established in 1999, see Judge Pitman's Order of 6/24/99, Appendix p.A54-A55, and with the denials of promotions of 2000 and 2001 were new claims raised by defendant in "Reply", and it has been proven that those dismissals were wrong. See p. 6-7 and p. 13-18 of this document .See Federal Civil Procedure 15 (b), Appendix p.A56-A60. .

4. I have suffered so much due to discrimination And retaliation on that job, and I have had to Pay out tremendous amount of money for Legal expenses, I am in a terrible financial hole, I need to get justice to pay back debts.

5. In my proposed Pretrial Order, I listed the Complaints of the Bureau chemists with NYS Human Rights, see Appendix p.A95-A101. . At trial I tried to talk about how racism the Asian Indian lab chiefs were, but the trial judge forbade me to,. excerpts of transcript, Appendix p A101-A103. .,

6. The Asian Indian Lab Chiefs would not hire, Nor keep; nor promote Chinese chemists. The denial of my case, only encouraged the Asian Indian Chiefs to be more discriminatory. **The proven open racial slur of Dixit:" We Indians are Aryan, Hitler said we are the best!" See p. 11 and p. 20-21 of this document. And Dixit got a big promotion Last year.**
Please read the whole document, and the appendixes.

CONCLUSION

This petition for a writ of certiorari should Be granted.

Dated: June 23, 2009.

Respectfully submitted,

Ming Yen Hou

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